

Message Text

UNCLASSIFIED

PAGE 01 STATE 159430
ORIGIN EB-07

INFO OCT-01 EUR-12 ISO-00 L-03 JUSE-00 COME-00 FTC-01
CIAE-00 INR-07 NSAE-00 STR-04 /035 R

DRAFTED BY EB/IFD/BP:TASCHLENKER:VJW

APPROVED BY EB/IFD/BP:HJWINTER

L/EB - PTRIMBLE

L/EB - SBENSON

L/SCS - RDALTON (INFO)

JUSTICE - JDAVIDOW (SUBS)

-----116401 090109Z /73

P 082340Z JUL 77

FM SECSTATE WASHDC

TO AMEMBASSY LONDON PRIORITY

UNCLAS STATE 159430

E.O. 11652: N/A

TAGS: ETRD

SUBJECT: ANTITRUST: RTZ TESTIMONY IN WESTINGHOUSE
CONTRACTS LITIGATION

FOR DEPUTY ASSISTANT SECRETARY MEISSNER (EB/IFD)

1. FOLLOWING CONSULTATIONS WITH DEPARTMENT, THE DEPARTMENT OF JUSTICE (DOJ) HAS DECIDED TO PROCEED WITH GRANT OF SECTION 6002 IMMUNITY TO RIO TINTO ZINC (RTZ) CORPORATION EXECUTIVES WHO TOOK FIFTH AMENDMENT PRIVILEGE IN DEPOSITIONS IN MID-JUNE. GRANT OF USE IMMUNITY BY U.S. ATTORNEY GENERAL WOULD APPEAR TO REMOVE DISCRETION OF U.S. DISTRICT COURT HEARING WESTINGHOUSE CONTRACTS LITIGATION CONCERNING FIFTH AMENDMENT PRIVILEGE AND THEREBY FORCE TESTIMONY OF RTZ EXECUTIVES.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 STATE 159430

2. YOU WILL RECALL BRITISH OBJECTION THAT QUOTE, THE LETTERS ROGATORY WERE ISSUED UNDER THE PROCEDURES SPECIFIED BY THE HAGUE CONVENTION FOR TAKING EVIDENCE ABROAD IN CIVIL OR COMMERCIAL MATTERS, TO WHICH BOTH THE U.S. AND THE U.K. ARE PARTIES AND WERE CONSIDERED BY THE HIGH COURT OF JUSTICE IN LONDON ON THAT BASIS. THE RECENT ADMINISTRATIVE INTERVENTION BY THE DEPARTMENT OF JUSTICE

EXPRESSLY INDICATES THAT THE DOJ WISH TO UTILISE THE

PROCEDURES OF THE CONVENTION FOR THE DIFFERENT PURPOSE
OF COLLECTING EVIDENCE FOR CRIMINAL PROCEEDINGS. UNQUOTE
DOJ ARGUES THAT THIS ACTION DOES NOT RPT NOT VIOLATE THE
HAGUE CONVENTION AS CONTENDE IN THE BRITISH AIDE MEMOIRE
OF JUNE 27, POINTING OUT THAT:

-- (A) THE CONVENTION DOES NOT PROHIBIT THE USE OF
EVIDENCE TAKEN PURSUANT TO IT IN A CIVIL CASE FROM BEING
USED IN OTHER PROCEEDINGS;

-- (B) DOJ APPEARED ONLY AFTER DEPONENTS CLAIMED
FIFTH AMENDMENT PRIVILEGE;

-- (C) BRITISH COURTS SPECIFICALLY RECOGNIZE THE
POSSIBILITY THAT THE EVIDENCE IN QUESTION MIGHT SUBSE-
QUENTLY BE USED IN THE GRAND JURY PROCEEDING, AND RECOG-
NIZED THE ROLE TO BE PLAYED BY DOJ IN EVENT OF
FIFTH AMENDMENT BEING INVOKED (HAGUE CONVENTION RESERVES
TO AUTHORITIES OF REQUESTING STATE THE RESOLUTION OF
PRIVILEGE CLAIMS BASED ON REQUESTING STATE LAW); AND

-- (D) PRIMARY PURPOSE OF THE DEPOSITIONS IS USE IN
CIVIL CASE, AND EXISTENCE OF GRAND JURY PROCEEDING DOES
NOT AFFECT QUESTION WHETHER DEPOSITIONS SHOULD GO FORWARD.
UNCLASSIFIED

UNCLASSIFIED

PAGE 03 STATE 159430

3. DEPARTMENT BELIEVES THAT THESE POINTS ADEQUATELY
RESPOND TO BRITISH OBJECTIONS AND THAT DOJ GRANT OF
IMMUNITY TO RTZ OFFICERS IN THIS U.S. LITIGATION DOES
NOT VIOLATE LETTER OR SPIRIT OF HAGUE CONVENTION, IN
VIEW OF FACT THAT CONVENTION DOES NOT PROHIBIT EVIDENCE
TAKEN PURSUANT TO IT IN CIVIL OR COMMERCIAL CASES FROM
BEING USED IN OTHER PROCEEDINGS, INCLUDING CRIMINAL
PROSECUTIONS. ANSWER WOULD LIKELY BE DIFFERENT IF PRI-
MARY PURPOSE OF DEPOSITIONS IN WESTINGHOUSE LITIGATION
WAS IN FACT TO OBTAIN EVIDENCE FOR GRAND JURY PROCEEDING,
BUT THIS DOES NOT APPEAR TO BE THE CASE.

4. DEPARTMENT IS DRAFTING AN AIDE MEMOIRE TO BRITISH
EMBASSY INCORPORATING AND ELABORATING ALL THE ABOVE
POINTS. BRITISH EMBASSY HAS BEEN INFORMED ABOUT IMMINENT
SECTION 6002 ACTION AND IS AWAITING AIDE MEMOIRE. VANCE

UNCLASSIFIED

NNN

Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: LITIGATION, ANTITRUST, CONTRACTS, INVESTIGATIONS, BUSINESS FIRMS
Control Number: n/a
Copy: SINGLE
Sent Date: 08-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1977STATE159430
Document Source: CORE
Document Unique ID: 00
Drafter: TASCHLENER:VJW
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770244-0019
Format: TEL
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1977/newtext/t19770775/aaaacnvb.tel
Line Count: 111
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: fe9b8a6e-c288-dd11-92da-001cc4696bcc
Office: ORIGIN EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: n/a
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 02-Dec-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1916222
Secure: OPEN
Status: NATIVE
Subject: ANTITRUST: RTZ TESTIMONY IN WESTINGHOUSE CONTRACTS LITIGATION FOR DEPUTY ASSISTANT SECRETARY MEISSNER (EB/IFD)
TAGS: ETRD, US, RIO TINTO ZINC
To: LONDON
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/fe9b8a6e-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009